HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.1525 of 2006

ORDER:

Heard the learned counsel for the petitioner and the 1st respondent.

The present revision case is filed questioning the judgment passed in Crl.A.No.114 of 2004 dated 08.09.2006 on the file of the learned II Additional District and Sessions Judge (FTC), Medak at Sangareddy, confirming the orders passed in C.C.No.61 of 2003 dated 07.09.2004 on the file of the learned Judicial Magistrate of First Class, Special Mobile Court, Sangareddy.

The facts, which lead to filing of the present revision case, are that the 1st respondent herein is a private company, represented by its Managing Director. The nature of business is manufacturing Carbon Steel Castings. The petitioner has been purchasing the said steel castings from it since August, 1999. In pursuance of the said transactions, the petitioner fell due an amount of Rs.4,75,000/- to the 1st respondent. The petitioner issued an account payee cheque bearing No.568583 dated 14.05.2001 for a sum of Rs.2,00,000/- drawn on State Bank of Hyderabad, IDPL Colony Branch, Kukatpally in favour of the 1st respondent company. When the said cheque was presented, it was dishonoured and returned unpaid on 12.11.2001 with an endorsement "exceeds arrangement". The 1st respondent got issued a legal notice on 21.11.2001 demanding payment of the amount within 15 days of the receipt of the notice. In spite of issuance of notice, the petitioner failed to make any payment. In those circumstances, the 1st respondent filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act (for short, "the Act") and under Sections 417 and 420 IPC. The Court below, after taking cognizance of the offence, numbered the case as C.C.No.582 of 2001. Later the case was transferred to the present Court and re-numbered as C.C.No.61 of 2003.

After appearance of the petitioner, copies of the documents were supplied to her in compliance with Section 207 Cr.P.C. She was examined under Section 251 Cr.P.C., stating the offence alleged against her and she pleaded not guilty.

During the course of trial, to bring home the guilt of the accused for the alleged offence, the 1st respondent examined PWs.1 to 3 and marked Exs.P1 to P50. The petitioner has not examined anybody on her behalf, but marked Exs.D1 to D3.

After hearing, the learned Magistrate by orders dated 07.09.2004 found the petitioner guilty of the offence punishable under Section 138 of the Act, convicted and sentenced her to suffer simple imprisonment for one year and directed her to pay compensation of Rs.2,00,000/- by way of demand draft to the 1st respondent within three months from the date of the order and in default, she shall undergo simple imprisonment for three months.

Aggrieved by the said judgment, the petitioner filed an appeal in Crl.A.No.114 of 2004 on the file of the learned II Additional District and Sessions Judge (FTC), Medak at Sangareddy. The lower appellate Court framed the following points:

> "1. Whether the complainant is the authorized person to file a complaint on behalf of the company?
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> 2. Whether the ingredients under Section 138 of the Negotiable Instruments Act are proved by the complainant?
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> 3. Whether the debt of accused is legally enforceable debt?
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> 4. Whether the judgment of conviction of the lower Court is set aside or to be modified or confirmed?
>
> 5. To what relief?"

After hearing both the parties and considering the material on record, the lower appellate Court dismissed the appeal confirming the judgment of conviction by judgment dated 08.09.2006. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would contend that both the Courts below ought to have appreciated that a false case has been foisted against the petitioner and therefore she should have been acquitted. The 1st respondent failed to establish the offence under Section 138 of the Act and it has not proved its case beyond reasonable doubt. The demand notice was not served on the petitioner and the same is also not proved by the 1st respondent. The statement of account filed by the 1st respondent is not corroborated with the oral evidence adduced by it and the other witnesses. Both the Courts below miserably failed to take into account the payments made by the petitioner. In fact, there are no amounts due to the 1st respondent. The petitioner paid more amounts compared to the supplies made and in that context suits are pending between her and the 1st respondent. Up to 31.03.2000, amounts have been paid and thereafter no material has been supplied to the petitioner by the 1st respondent.

Per contra, the learned counsel appearing for the 1st respondent supported both the judgments of the Courts below. He specifically contended that even after 31.03.2000, material has been supplied to the petitioner. During the pendency of the appeal, the petitioner, who was examined herself as DW.1, categorically stated that on 15.07.2004, the State Bank of Hyderabad, IDPL Colony Branch, Kukatpally, issued a certificate showing that N.V. Engineering Enterprises has purchased a banker's cheque No.590338 for Rs.1,00,000/- in favour of the 1st respondent on 28.06.2000. Ex.D10 is the certificate issued by the said bank along with the statement of account from 01.04.2000 to 31.03.2001. However, the said banker's cheque was not handed over to the 1st respondent. The above said evidence adduced by the petitioner itself falsifies the contention raised by her counsel that after 31.03.2000 no material has been supplied and no amounts are due to the 1st respondent.

Having heard both the counsel and after perusal of the material on record, it is revealed that the 1st respondent being a company used to supply the Carbon Steel Castings to the petitioner. Pursuant to the said transactions, the petitioner issued cheque bearing No.568583 dated 14.05.2001 for a sum of Rs.2,00,000/- in the name of the 1st respondent company. On presentation, the said cheque was returned with an endorsement "exceeds arrangement". After issuance of legal notice demanding the said amount, a complaint was lodged vide C.C.No.61 of 2003 (Old C.C.No.582 of 2001). The petitioner has taken a defence that she had paid more amounts than the supplies made and in that connection civil suits are pending between them. In fact, the subject cheque was issued for security purpose, but not towards the legally enforceable debt.

However, both the Courts below, relying on the evidence adduced by the 1st respondent, have categorically held that the subject cheque was issued towards the legally enforceable debt, since the 1st respondent supplied the Carbon Steel Castings to the petitioner. In the judgment, the lower appellate Court was pleased to observe that on the date of judgment, the amount due by the petitioner was Rs.4,75,000/- and when her counsel filed a Xerox copy of the demand draft for Rs.2,00,000/- as full settlement, the 1st respondent was not ready to take the same on the ground that the total amount due was Rs.4,75,000/- and not interested to take part amount. The said fact clinchingly proved that as on the date of delivery of the judgment by the lower appellate Court also, the petitioner was due a sum of Rs.4,75,000/- to the 1st respondent. When once it is brought on record that the subject cheque was issued towards the legally enforceable debt in the form of receiving the Carbon Steel Castings, and when once the petitioner has taken the stand that she is not liable to pay any amount, much less, any legally enforceable debt, it is for her to prove the same. In fact, the evidence adduced on her behalf and the specific defence taken by her that she is not liable to pay any amount is contrary to her conduct during the pendency of the appeal. She has also not taken any steps to prove that she is not liable to pay any amount by filing any purchase invoices and the total amounts paid by her through the statement of accounts. In the absence of the same, it cannot be said that there is no legally enforceable debt. In these circumstances, this Court is of the opinion that there is no irregularity or illegality in the judgment passed by the lower appellate Court in Crl.A.No.114 of 2004 dated 08.09.2006 confirming the judgment passed by the Court below in C.C.No.61 of 2003 dated 07.09.2004 and there are no merits in the revision case.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 26.07.2018.
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